IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 953 OF 1998

M/s. Neelkamal Exhibitors Pvt.Ltd. ... Appellants

Versus

Shri Dayaram Maurya & Anr. ... Respondents

...

Mr. Naresh Ratnani for the appellants.

Mrs. Geeta Joglekar for B.M.C. respondent no.2.

CORAM : D.G. KARNIK, J

DATED : 17th November 2006

P.C.:

1. Heard learned counsel for the appellants and respondent no.2. None present for respondent no.1 when called.

2. This appeal is directed against the order dated 3rd September 1998 passed by the City Civil Court, Mumbai allowing the Motion No.6080 of 1999 taken out by

respondent no.1 and directing the respondent no.2 to consider the application for regularization of the unauthorised construction made by him without asking for No Objection Certificate (N.O.C.) of the appellant landlord and further restraining the respondent no.2 Municipal Corporation from demolishing the suit structure.

3. The appellant is the owner of a building known as Ganga Jamuna Theatre housing two cinema theatres. The stilt below the theatre complex is meant for parking of the cars of the theatres. The portion of the stilt was let out/given on licence by the appellant to the respondent no.1. It appears that the respondent no.1 has made certain constructions in the stilt illegally and unauthorizedly and without the permission of the appellant - landlord and without permission of respondent no.2 - Municipal Corporation. There are several disputes between the appellant - landlord and respondent no.1 regarding the premises let out as well as regarding the alleged unauthorised structures errected by the respondent no.1 in the stilt premises. It appears that respondent no.2 issued a notice to respondent no.1 to show cause why the unauthorised structure erected by him be not removed. It appears that respondent no.1

thereafter made an application to respondent no.2 for regularization of the unauthorised structure. By order dated 1st August 1995, respondent no.2 - Municipal Corporation rejected the proposal of respondent no.1 for regularization of the premises. It appears that one of the grounds for Corporation for not considering the request for regularization of the proposal was that the application was not accompanied by the N.O.C. from the appellant who is the landlord and owner of the premises. Thereafter, respondent no.1 filed a suit bearing L.C.Suit No.6342 of 1997 against the appellant and respondent no.2 for quashing and setting aside of the decision of respondent no.2 dated 1st August 1997 rejecting the proposal of respondent no.1 for regularization. Respondent no.1 also prayed for a mandatory injunction directing respondent no.2 to consider the proposal of the appellant for regularization of the unauthorised structure without insisting upon N.O.C. from the appellant - landlord. In the suit, respondent no.1 took out a motion bearing no.6080 of 1999 for an injunction restraining respondent no.2 Municipal Corporation demolishing unauthorised structure in the suit premises and also for a direction to the respondent no.2 to consider the application of respondent no.1 for regularization without asking for any N.O. C. from the

appellant. By the order dated 3rd September 1998, the City Civil Court, Mumbai allowed the Motion and granted both the reliefs. That order is impugned in this appeal.

4. It appears that few other proceedings also going on between the appellant and respondent no.1. One such proceedings bearing Writ Petition No.2565 of 2002 had come up before me and was decided by the order dated 9th August 2005. Learned Counsel for the appellant invited my attention to the final order passed in the said Writ Petition which reads as follows :_-

> " The impugned order is set aside and the matter is remitted back to the Additional Municipal Commissioner for considering the matter afresh in the light of the observations made hereinabove. Since the matter is old, the Additional Municipal Commissioner is requested to expedite it as expeditiously as possible preferably within three months of the knowledge of this order."

5. In Appeal No.964 of 2005 the order dated 9th June 2005 passed by me in Writ Petition No.2564 of 2002 was partly modified. The Division Bench passed the following order :-

> " Heard the learned counsel for the appellant and the respondent. By this appeal the appellant is challenging the order dated 9.6.2005. We have perused the impugned order, wherein the learned Single Judge has directed the Additional Municipal Commissioner to reconsider the entire matter and pass an appropriate order within a period of three months from the date of knowledge of that order.
>
> We make it clear that the learned Additional Municipal Commissioner shall pass an appropriate, reasoned order, strictly on it’s own merits and in accordance with law and will not be influenced by any of the observations of the learned Single Judge in the above. All the contentions of both the parties are kept expressly open. In

> view of the above directions, the learned counsel for the appellant seeks leave to withdraw the appeal. Appeal is allowed to be withdrawn and stands dismissed as such."

6. I am informed at the bar that this order of the Division Bench has become final. As per the order of the Division Bench of this Court, the respondent no.2 is required to decide the application of respondent no.1 for regularization.

7. Appellant makes the grievance that despite this order of the Division Bench, the respondent no.2 has not decided the application made by respondent no.1 for regularization. He submitted that the Officer of respondent no.2 - Municipal Corporation are hand in gloves with respondent no.1. They are deliberately not deciding the application as respondent no.2 would thereafter be required to take action for removal of the unauthorised structure. They want to avoid taking of the action and therefore they are not deciding neither deciding the application of respondent no.1 for regularization nor taking any action for demolition.

He therefore prayed the order of injunction restraining the respondent no.2 Municipal Corporation from demolishing the unauthorised structure should be set aside.

8. The Division Bench of this Court has issued the direction to respondent no.2 Municipal Corporation to decide the application made by respondent no.1 to regularize the unauthorised construction. In the circumstances it would not be permissible to vacate the order of injunction pending the decision at the hands of respondent no.2. It is hoped that respondent no.2 and its officers would decide the application of respondent no.1 expeditiously and thereafter take appropriate action in accordance with law.

9. With these directions, the appeal is disposed of.

(D.G. KARNIK, J)